TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 122.

DANIEL H. CARSTAIRS AND JOHN H. CARSTAIRS, CO-PARTNERS, TRADING AS CARSTAIRS BROTHERS, PLAINTIFFS IN ERROR,

vs.

WILLIE B. COCHRAN, TREASURER AND COLLECTOR OF BALTIMORE COUNTY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

FILED AUGUST 26, 1902.

(18,654.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 8, 1903.

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Petition for Writ of Error.

Filed August 14th, A. D. 1902.

In the Court of Appeals of Maryland.

DANIAL H. CARSTAIRS and JOHN H. CARSTAIRS, Trading as Carstairs Brothers, Appellants, *vs.* WILLIE B. COCHRAN, Treasurer and Collector of Baltimore County, Appellee.	Petition for Writ — Error.

Appeal from the circuit court of Baltimore county.

Come now the appellants, Danial H. Carstairs and John H. Carstairs, trading as Carstairs Brothers, and say that on the 19th day of June, 1902, judgment in this case was entered by this
2 court in favor of the appellee, and against the appellants by which said judgment the appellants were aggrieved in that in said judgment and the proceedings had prior thereto in this case certain errors were committed to the prejudice of these appellants, all of which will appear more in detail from assignment of errors filed with this petition. Wherefore these appellants pray that a writ of error may be issued to the Supreme Court of the United States for a correction of the errors complained of, and that a duly authenticated transcript of the record, proceedings and papers herein may be sent to the Supreme Court of the United States.

W. CABELL BRUCE,
D. K. ESTE FISHER,
3 *Composing Firm of Fisher, Bruce and Fisher, Attorneys for Danial H. Carstairs and John H. Carstairs, Trading as Carstairs Brothers.*

STATE OF MARYLAND:

Desiring to give the petitioners an opportunity to test in the Supreme Court of the United States the question presented in the aforegoing petition and in the assignment of errors filed therewith, it is hereby ordered that a writ of error be allowed to said court, and that the same be made a supersedeas upon the filing by the petitioners of a bond in the penal sum of $3500.00, in the form and with a surety to be approved by me.

In testimony whereof witness my hand this 13th day of August, 1902.

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

4 On the back thereof, is the following endorsement to wit: Mr. Clerk: Please file this petition for writ of error and the assignment of errors therewith Fisher Bruce & Fisher, attorneys for petitioners.

5 *Assignment of Errors.*

Filed August 14th, 1902.

UNITED STATES OF AMERICA:

Supreme Court.

DANIAL H. CARSTAIRS and JOHN H. CARSTAIRS, Trading as Carstairs Brothers, Plaintiffs in Error,
vs.
WILLIE B. COCHRAN, Treasurer and Collector of Baltimore County, Defendant in Error.
} Assignment of Errors.

In the case, in the court of appeals of Maryland, begun and holden at Annapolis in the State of Maryland on the first Monday of April, 1902, wherein the said Danial H. Carstairs &c. were appellants, and Willie B. Cochran &c. was appellee, and wherein final judg-
6 ment was entered in favor of the said appellee against the said appellants (and said court being the highest court of law and equity of said State in which a decision could be had in the said case) upon the writ of error allowed upon the said judgment, returnable to the October term of the Supreme Court of the United States, to be begun and *and* holden in the city of Washington, in the District of Columbia, on the second Monday of October, 1902, the said Danial H. Carstairs &c., the plaintiffs in error, make the following assignment of errors committed by said court of appeals of Maryland, as appeared by the record in the said case, that is to say:—

1. That by a statute of the *statute of the* State of Maryland, to wit:—the act of the General Assembly of Maryland of 1892,
7 chapter 704, each distiller and owner or proprietor of a bonded or other warehouse, in which distilled spirits are stored, is required to make report to the State tax commissioner on the first day of January of each year, of all distilled spirits on hand at such date, and a tax for the ensuing year is levied on the amount of distilled spirits so in hand, and required to be paid by said distiller or owner or proprietor of a bonded or other warehouse, in which distilled spirits are stored, notwithstanding the fact that said distilled spirits are not the property of nor owned by said distiller or owner or proprietor of a bonded or other warehouse, but the property of other persons, unknown to said distiller or owner or proprietor, the

ownership of the same being evidenced by negotiable warehouse receipts or certificates.

8 That said act of the General Assemby of Maryland requiring said distiller or owner or proprietor to pay the tax upon distilled spirits which belong to other persons is the taking of said distiller's or owner's or proprietor's property to pay the debt of another, and is therefore contrary and repugnant to section one of the fourteenth amendment of the Constitution of the United States, which guarantees that "No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States," and that no State shall deprive any person of life, liberty or property without due process of law," and by the determination and judgment of said court of appeals of Maryland, to review — said writ of error has been sued out, allowed and is prosecuted, it is *prosecuted, it is* determined and adjudged that the said

9 of the State of Maryland, to wit: the said act of 1892, chapter 704, is a valid exercise of the rightsful authority of the State of Maryland, and that said statute of said State is not contrary to the provisions of the Constitution of the United States of America, and that the plaintiffs in error who are distillers, owning bonded warehouses in said State are liable to the defendant in error for the tax aforesaid sued for in this action upon spirits in said bonded warehouses on the 1st day of January, 1900, belonging to persons other than the plaintiffs in error, and holding negotiable warehouses certificates therefor evidencing their ownership, and unknown to the plaintiffs in error.

And the plaintiffs in error say that the rulings, determination and judgment of the said court of appeals of Maryland, contained in and shown by the said record in sustaining the validity of the said

10 statute of the said State, to wit: the act of 1892, chapter 704, and the said tax, are repugnant to the said provisions of section one of the fourteenth amendment of the Constitution of the United States.

And the plaintiffs in error further assign as error.

2. That the said court affirmed the ruling of the circuit court for Baltimore county (the trial court) in over-ruling the demurrer of the plaintiffs in error to the amended declaration.

3. And that the court of appeals erred in affirming the action of the said court in refusing to permit the plaintiffs in error to put to the plaintiff in error, John H. Carstairs, as a witness upon the stand, the question embodied in the first bill of exceptions of the

11 plaintiffs in error "Did you own any of these spirits that were so returned?"

4. And that the said court of appeals erred in affirming the action of the said circuit court in refusing to permit the plaintiffs in error to offer the evidence set forth in the following offer embodied in the second bill of exceptions of the plaintiffs in error, to wit:

"The defendants offer to prove by the witness, John H. Carstairs "and by Mr. Donaldson that the defendants on the first day of Janu- "ary, 1900, did not own any of the whiskey mentioned in the tax

"bill offered in evidence, and in the return made by the defendants "to the State tax commissioner in January, 1900, excepting 489 "barrels, and that the defendants have not owned any of said spirits "since that time excepting those 489 barrels, but that all of said "whiskey, excepting said 489 barrels belonged to other per-
12 "sons unknown to the defendants, who held negotiable ware-
"house certificates therefor, evidencing their ownership."

5. And that the said court of appeals erred in affirming the action of the said circuit court in granting the two prayers of the defendant in error embodied in the fifth bill of exceptions of the plaintiffs in error, as follows:

1st prayer. If the jury find that the State tax commissioner on or about the 28th day of February, 1901, made return to the county commissioners of Baltimore county of the number of barrels of spirits and the valuation set thereon by said tax commissioner held by the defendants, or in their custody on the first day of January 1900, as appears by the return offered in evidence and that the county commissioners of Baltimore county in making their levy for State and county taxes for the year 1900 includ*ing* in their
13 said levy the sum of four thousand, five hundred dollars for taxes due by all the distillers in Baltimore county, including the taxes estimated to be due by the defendants for that year; and if the jury shall find that defendants have not paid the taxes on said spirits so returned by the tax commissioners, or any part thereof, then the verdict of the jury in this case should be for the amount of taxes claimed by the plaintiff with interest thereon from June 14th, 1901."

"2nd prayer. If the jury shall find that the defendants in the month of January, 1900, made return to the State tax commissioner, under the act of 1892, chapter 704, of the amount of spirits in their bonded warehouse on the first of January, 1900, and that the State tax commissioner valued said spirits at eight dollars per barrel, and that on the 19th day of April, 1900, the State tax commis-
14 sioner wrote to the county commissioners of Baltimore county, saying that he would transmit the returns of spirits held in the warehouses in Baltimore county the following week, and that the same was not sent until on or about 28th February, 1901, and if they further find that the county commissioners in making their levy for State and county taxes for the year 1900, made the same upon an estimate of four thousand five hundred dollars due for spirits by the distilleries situated in Baltimore county, and included therein the taxes estimated as proper to be levied for taxes by defendants for spirits for the year 1900 under the act of 1892, chapter 704, aforesaid, and if they find that said defendant has not paid taxes on said spirits for the year 1900, then the verdict in this case should be for the plaintiff for the amount of the tax
15 claimed with interest thereon from June 14th, 1901."

6. And that the said court of appeals erred in the action of the said circuit court in refusing the 2nd, 3rd and 8th prayers of

the plaintiffs in error embodied in the fifth bill of exceptions of the plaintiffs in error, as follows:

"2nd prayer. The court instructs the jury that *that* there is no evidence in this case that the defendants were owners on January 1st, 1900, or subsequently thereto, of any of the whiskey mentioned in the tax bill and return of the tax commissioner offered in evidence, and that it would be contrary to the law of the land, and a taking of property of the defendants without due process of law, to require them to pay taxes upon whiskey in the defendant's bonded warehouses on January 1st, 1900, or thereafter belonging to per-
16 sons other than the defendants and their verdict must therefore be for defendants."

"3rd prayer. The court instructs the jury that there is no evidence in this case that the State tax commissioner was authorized by law to value the spirits mentioned in the evidence to the defendants, or that the county commissioners were authorized by law to levy the tax claimed by the plaintiff upon said spirits, and their verdict must therefore be for the defendants.

"8th prayer. The court instructs the jury that the plaintiff is not entitled to recover in this action because.

1. There is no evidence that the defendants were on the first day of January, 1900, or thereafter, the owners of any of the spirits mentioned in the evidence.

17 2. Because there is no evidence of any obligation on the defendants to pay the taxes claimed in this action.

3. Because there is no evidence in this action that the State tax commissioner had lawful authority to value the spirits mentioned to the defendants, or that the defendants were lawfully assessed therewith; and that the verdict of the jury must be for the defendants."

There is error also in this, to wit: That by the said record aforesaid it appears that the judgment aforesaid, in the form aforesaid given, was given for Willie B. Cochran &c., against the said Danial H. Carstairs &c., whereas by the law of the land the said judgment ought to have been given for the said Danial H. Carstairs &c., against the said Willie B. Cochran &c., and the said Danial H. Car-
18 stairs &c., prays that the judgment aforesaid for the errors aforesaid, and other errors in the record and proceedings, and the matters therein set forth, may be reversed, annulled, and held for nothing, and that they may be restored to all things which they have lost by occasion of said judgment.

W. CABELL BRUCE,
D. K. ESTE FISHER,
Composing Firm of Fisher, Bruce and Fisher,
Attorneys for Plaintiffs in Error.

Endorsed on the back as follows: United States of America Supreme Court. Danial H. Carstairs, *et al.*, &c., plaintiffs in error.

vs. Willie B. Cochran, treasurer, &c., defendant in error
19 Assignment of errors:—Mr. Clerk:—Please file this assignment of errors. W. Cabell Bruce D. K. Este Fisher attorneys for plaintiffs in error. Filed August 14, 1902.

20 *Writ of Error. Filed August 14th*, 1902.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of appeals of the State of Maryland, Greeting:

[The Seal of the Circuit Court, Maryland.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals of the State of Maryland before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Willie B. Cochran, treasurer of Baltimore county and Danial H. Carstairs and John H. Carstairs,
21 copartners trading as Carstairs Brothers. Wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repu-nant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Danial H. Carstairs and John H. Carstairs, as by
22 their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of

23 the United States, the 13th day of August, in the year of our Lord one thousand nine hundred and two.

JAS. W. CHEW,
Clerk of the Circuit Court of the United States for the District of Maryland.

Allowed by

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

24 *Citation.*

Filed August 14th, 1902.

UNITED STATES OF AMERICA, *ss:*

To Willie B. Cochran, treasurer and collector of Baltimore county, Greeting:

Your are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of Maryland, wherein Danial H. Carstairs and John H. Carstairs, copartners trading as Carstairs Brothers are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error as in the said writ of
25 error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable James McSherry chief justice of the court of appeals of Maryland this thirteenth day of August, in the year of our Lord one thousand nine hundred and two.

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

Endorsed on the back as follows:

Service of the within citation and delivery of a copy thereof to me this thirteenth day of August, 1902, is hereby admitted. D. G. McIntosh, attorney for Willie B. Cochran, treasurer and collector. Filed August 14th, 1902.

26 *Record.*

In the Court of Appeals of Maryland.

DANIEL H. CARSTAIRS and JOHN H. Carstairs, Trading as Carstairs Brothers,
vs.
WILLIE B. COCHRAN, Treasurer and Collector of Baltimore County.

No. —. Appeal from the Circuit Court of Baltimore County.

Fisher, Bruce and Fisher, for appellants.
David G. McIntosh, for appellee.

Filed April 4th, 1902.

27 In the Circuit Court for Baltimore County, Law Side.

ALFRED FOWBLE, Treasurer and Collector of Baltimore County,
vs.
DANIEL H. CARSTAIRS and JOHN H. CARSTAIRS, Trading as Carstairs Brothers.

Docket Entries.

July 11th, 1901.—Order, nar. notice & tax bill for Co. taxes for year 1900 filed. S'p'na issued and copy of nar. notice and tax bill sent with writ. App. of D. G. McIntosh for pl't'ff.

July 15th, 1901.—App. of Messrs. Fisher Bruce and Fisher for def'ts.

Rule plea.

July 26th, 1901.—Pleas to each of the first two counts of the pl't'ff's declaration filed. Service of copy admitted. Rule rep. as to said counts.

Same day.—Demurrer to each of the 3rd and 4th counts of declaration filed. Service of copy admitted.

Nov. 30th, 1901.—Motion to withdraw pleas filed to 1st and 2nd counts of the declaration, leave granted,

Same day.—Demurrer to 1st and 2nd counts of the declaration filed.

Same day.—Issue joined on demurrer.

Dec. 13th, 1901.—Demurrer overruled as to 1st and 2nd counts in the declaration and sustained as to the 3rd and 4th counts in the declaration and leave granted to amend declaration.

28 December 30th, 1901.—Amended declaration filed.

Rule plea to amended declaration.

Jan'y 3rd, 1902.—Plea to each of the 1st and 2nd counts of the amended declaration filed.

Same day.—Demurrer to each of the 3rd 4th and 5th counts of the amended declaration filed.

Feb'y 5th, 1902.—Demurrer overruled.

Same day.—Plea filed: rule rep.

Same day.—Issue joined.

Feb'y 5, 1902.—Jury sworn. Viz.

Same day.—Agreement as to facts filed Feb'y 5 1902. Motion to make Willie B. Cochran treasurer and collector, plaintiff in place of Alfred Fowble filed. Leave granted Motion objected to by def'ts. Objection overruled, amendment made, exceptions noted.

Same day.—Plaintiff's 1st and 2nd prayers, granted and filed.

Same day.—Defendants' 1st, 2nd, 3rd, 4th, 5th, 6th, 7th & 8th prayers refused and filed.

Same day.—Defendants except to the granting of the plaintiff's prayers and to the refusal of the def'ts' prayers.

Same day.—Verdict in favor of the plaintiff.

Damages assessed by the jury at one thousand five hundred and seventeen dollars and sixty-nine cents ($1517.69) Feb'y 10th 1902. Judgement on verdict in favor of the plaintiff for the sum of fifteen hundred and seventeen and $\frac{69}{100}$ dollars. ($1517.69) damages assessed by the jury with interest from date and costs.

March 3rd, 1902.—Defendants' 1st, 2nd, 3rd, 4th and 5th bills of exceptions filed.

March 25th.—Order for an appeal to the court of appeals of Md. filed.

March 27th, 1902.—Appellants approved appeal bond in the penalty of three thousand two hundred dollars, filed.

This action was commenced in the circuit court for Baltimore county on the law side thereof, on the 11th day of July in the year 1901, by the plaintiff, through his counsel. D. G. McIntosh, filing an order to docket a suit under the aforegoing titling; and thereafter on the 30th day of December 1901, filing the following amended declaration, to wit:

29 STATE OF MARYLAND, *Baltimore County*, } *To wit:*

Alfred Fowble, treasurer and collector of Baltimore county by D. G. McIntosh his attorney, sues Daniel H. Carstairs and John H. Carstairs, trading as Carstairs Brothers:

1. For money payable by the defendants to the *the* plaintiff as treasurer and collector of State and county taxes for Baltimore county: For money received by the defendants for the use of the plaintiff.

2. And for money due from the defendants to the plaintiff as aforesaid for State and county taxes for the year 1900.

3. And for money due from the defendants as distillers in Baltimore county to the plaintiff as aforesaid for State and county taxes for the year 1900 upon an assessment of $127060 made by the State tax commissioner against the defendants for distilled spirits

had on hand by them on the first day of January 1900, and which said assessment agreeably to the provisions contained in chapter 704 of the acts passed at the January session 1892 of the General Assembly of Maryland, was liable to State and county taxes, and which said valuation of the State tax commissioner was returned by him to the board of county commissioners of Baltimore county and was placed in the levy made by said board of commissioners for the year 1900, and there is now due to the plaintiff for county taxes on said valuation and assessment so made as aforesaid the sum of $1143.54 for county taxes and the sum of $225.54, for State taxes with interest on said sums, from the time they became due and payable, and the payment of which said sums the plaintiff hath demanded, and the defendant hath refused to pay.

4. And for that the defendants are distillers and the owners or proprietors of certain premises in Baltimore county on which distilled spirits are stored and of which the said defendants on the first day of January in the year 1900 were the custodians, and it became the duty of said defendants on said first day of January in the year 1900 to make report to the State tax commissioner of all distilled spirits in the custody of said defendants on that date. And the said defendants are in law liable to pay the State and county taxes on the valuation of the distilled spirits so in hand, at such date, and it further became the duty of said defendants to make return on the said first day of January, to the State tax commissioner of all the distilled spirits in their custody on that date, and the said defendants accordingly made report to the tax commissioner of the State of Maryland of 1587$\frac{7}{2}$ barrels of distilled spirits in their custody on said first day of January, which the said tax commissioner valued, for the purpose of taxing at eight dollars per barrel amounting in the aggregate to the sum of $127060 and the said tax commissioner transmitted to the county commissioners of Baltimore county a copy of said valuation so made by him, and the said county commissioners in making their levy for State and county taxes for the year 1900, included the valuation of the spirits of defendants, in the levy made by them, and the said defendants became liable to pay the sum of $1143.54 for county taxes and the sum of $225.54 for State taxes, and the plaintiff hath demanded of the said defendant the said sums of money with interest from the time the same was due and payable which the defendants refuse to pay.

5. And for that the defendants on the first day of January in the year 1900, and theretofore were distillers and the owners or proprietors of certain premises in Baltimore county in which distilled spirits were stored at the date aforesaid, and of which the defendants on said day were the custodians, and it became the duty of said defendants on the first day of January in each and every year to make report to the State tax commissioner of all distilled spirits in their custody at such date; and the said defendants accordingly reported to the State tax commissioner that there *was* in their custody, on said first day of January 1900 1587$\frac{7}{2}$ barrels of distilled spirits which the said tax commissioner valued for purposes of taxation at eight

dollars per barrel amounting in the aggregate to the sum of $127060, a copy of which valuation was by said tax commissioner duly transmitted to the county commissioner of Baltimore county, where the said premises on which said spirits were stored is situate, and the said spirits upon the said valuation and return so made became subject to State and county taxation; and a levy was made upon said distilled spirits by the said county commissioners for the year 1900 at the rate of ninety cents per one hundred dollars for county purposes amounting to $1143.54, and at the rate of seventeen and three quarter cents, per one hundred dollars, for State purposes amounting to $225.51 which said respective sums, with interest thereon from the first of May 1900, on the county tax, and interest from January 1st, 1901, on the State tax are due and payable and the plaintiff hath demanded payment, but the defendants refuse to pay the same.

And therefore the plaintiff brings suit and claims twenty-five hundred dollars damages.

D. G. McINTOSH,
Att'y for Plaintiff.

Pleas to First Two Counts of Amended Declaration.

(Filed Jan'y 3rd, 1902.)

Daniel H. Carstairs and John H. Carstairs, the defendants in this action, by Fisher, Bruce and Fisher, their attorneys, for a first plea to each of the first two counts of the amended declaration, of
31 the plaintiff, say that they never were indebted as alleged, and for a second plea to each of said counts the said defendants say that they never promised as alleged.

FISHER, BRUCE AND FISHER,
Att'ys for Def'ts.

Demurrer to the 3rd, 4th, and 5th Counts of the Amended Declaration.

(Filed Jan'y 3rd, 1902.)

Daniel H. Carstairs and John H. Carstairs the defendants in this action by Fisher, Bruce and Fisher their attorneys demur to each of the third, fourth, and fifth counts in the amended declaration of the plaintiff, and say that each of them are bad in substance.

FISHER, BRUCE AND FISHER,
Att'ys for Defendants.

Pleas to the Third, Fourth, and Fifth Counts of Amended Declaration.

(Filed Feb'y 5th, 1902.)

The defendants in this action by Fisher Bruce and Fisher their attorneys for a first plea to each of the third, fourth and fifth counts

in the amended declaration of the plaintiffs say that they never were indebted as alleged, and for a second plea to each of said counts that they never promised as alleged.

FISHER, BRUCE AND FISHER,
Att'ys for Defendants.

Agreement as to Facts.

See Defendants' 4th Bill of Exceptions.

(Filed Feb'y 5th, 1902.)

Plaintiff's and Defendants' Prayers.

See Def'ts' 5th Bill of Exceptions.

(Filed Feb'y 5th, 1902.)

32 *Defendants' 1st, 2nd, 3rd, 4th, and Fifth Bills of Exceptions.*

(Filed March 3rd, 1902.)

The Defendants' First Bill of Exceptions.

At the trial of this action, the plaintiff, in order to maintain the issue joined on his part, offered in evidence the tax bill against the defendants upon distilled spirits for the year 1900, as follows:

(Here follows tax bill marked p. 32.)

33 and offered the testimony of James E. Green tending to prove that he was the chief clerk and auditor in the office of the county commissioners of Baltimore county: That Alfred Fowble was treasurer and collector of said county during the years of 1900 and 1901, and the witness then produced the Journal of Proceeding- of the County Commissioners for Baltimore County, and testified that it contained the levy for 1900, made and signed by a majority of the county commissioners; and on being asked whether it included the levy on the spirits of the defendants, testified that it included a levy on the basis of $500,000., which was estimated as the amount of what the distilled spirits were likely to be, based upon the amount of the previous year, no return having been received from the State tax commissioner. That while the levy was in course of being determined on by the commissioners, a letter was received at their office from the State tax commissioner, dated April 19, 1900, addressed to Mr. E. S. Bosley, clerk, stating that the amount of distilled spirits tax of Baltimore county would be sent the next week:

Copy of letter here referred to.

OFFICE HOURS: { From April 1st to November 1st, from 9 A. M. to 5 P. M.
From November 1st to April 1st, from 9 A. M. to 3 P. M.

THOMAS J. MEADS,
THOMAS R. JENIFER,
FRANK P. BOSSOM, } CLERKS.

TAX LEVY, 1900.
12 District

ALFRED FOWBLE,
Treasurer and Collector of State and County Taxes
POSTOFFICE--TOWSON.

BRING THIS BILL WITH YOU.

DEMOCRAT PRINT, TOWSONTOWN.

LEDGER FOLIO.....

Mr. Carstairs Brothers

To County Commissioners of Baltimore County, Dr.

For County Tax, at 90 Cents per $100, on Assessment of $1270 60	1143 54	
Interest from May 1st, 1900, (see new Discount and Interest Law on back of bill)	85 77	1229 31

To The State of Maryland, Dr.

For State Tax, at 17½ Cents per $100, on Assessment of $1270.60.	225 54	
Interest from Jan'y 1st, 1901 (See State Discount and Interest Rate on back of bill)	7 90	233 44
Constable's Costs,		25
Levy,		
Survey,		
Advertising,		
Report of Sale,		
Order Nisi,		
Clerk's Costs,		
Deed,		
Commissions,		
Received Payment,		
.....Treasurer and Collector.		1462 75
.....1901. *Pr.....Clerk.*		7 Month, 1901.

Saturdays only, at the Manufacturers' National Bank, N. E. Cor. Balto. and Liberty Sts., Balto., from 9 A. M. to 1 P. M.

D. H. Carstairs et al
vs.
H. A. Cochran etc. } No 122 f. 32

LEVY 1900.

12 *DISTRICT.*

Ledger Folio 270.

CARSTAIRS BROTHERS.

County Assessment, $1270.60			
County Tax,	$ 1143	54	
Interest,	85	77	1229 31
State Assessm't,	$ 1270	60	
State Tax,	$ 225	54	
Interest,	7	90	233 44
Constable's Costs.			25
Levy,			
Survey,			
Advertising,			
Report of Sale,			
Order Nisi,			
Clerk's Costs,			
Deed,			
Commissions.			
Total,			1462 75

.....*Clerk.*

.....Month, ...day, 1901.

State of Maryland, Treasury department, office of State tax commissioner.

ANNAPOLIS, *April* 19, 1900.

E. S. Bosley, Esq., clerk, Towson, Md.

DEAR SIR: Account of distilled spirits tax of Baltimore county will be sent next week.

Respectfully,

ROBERT P. GRAHAM,
State Tax Commissioner.

but that no return was received from the State tax commissioner of the amount of spirits returned by the defendants, until March 1st, 1901, when he returned that they were valued at $127,060.

The plaintiff then offered in evidence the return made to the county commissioners of Baltimore county, which is in the form set forth in the agreement of facts hereinafter mentioned as filed in evidence.

The plaintiff then proved that the tax bill for the year 1900 was then made out on said valuation, and the witness then stated
34 that tax bills bore interest under the local law of Baltimore county from the 1st of May of the year on which the levy was made, and that the defendant's distillery was at Highlandtown in Baltimore county.

On cross examination the witness then testified that up to March 1st, 1901, the commissioners did not know the amount of spirits chargeable to each distillery; and that the tax bill sued on was not made out until after said date, and that he could not say whether or not demand was made on the defendants before that date, but that until then, the commissioners lacked the information on which to make out the bill.

The witness then testified as follows:—

Q. What did you say that book is you have before you?

A. This is the Journal of Proceedings of the County Commissioners.

Q. The Journal of Proceedings of the County Commissioners?

A. Yes sir.

Q. What was that you read there a few moments ago?

A. This is the formal declaration of the levy.

Q. How is the levy made?

A. It is made by the county commissioners, now——

Q. This is that levy?

A. That is the levy.

Q. Is that in the form of a resolution or what?

A. It begins in this way: "We the county commissioners of Baltimore county having met, as required by law, for the purpose of making the annual levy of State and county taxes for the ensuing year, and providing for all the expenses and disbursements of said county, including all outstanding obligations of said county, which have accrued in previous years, do now order and publish as follows:"

and further down with reference to county taxes they say: "We do further impose an assessment or tax of ninety cents on every one hundred dollars worth of assessable property in Baltimore county as a county tax being $594.360, upon real, fixed personal and mixed property, upon the stock of Maryland corporations and upon distilled spirits in bond, being on a total basis of $660.400.83, $43.363.70, upon bonds and other evidences of debt, issued by any State, (except the State of Maryland) or by any public or private corporation in any such State, or in any foreign county, and owned by residents
35 of Baltimore county, being at the rate of thirty cents on every one hundred dollars worth of such bonds or evidence of del on a basis of $14.454.568. and in addition thereto, the amount to be ascertained on September 1st, 1900, as the county's proportion of taxes upon interest of mortgages to be collected within the year commencing on that date, at the rate of three fourths of eight per centum per annum on said interest, the amount of said mortgage tax being now estimated to be $4500." That is part of the declaration of the levy.

Q. That is the declaration of the levy?

A. Yes sir.

Q. Now before that, when the levy—the property upon which the levy is to take effect, of course is listed?

A. Yes sir, we have on our ledger no statement of property of any distilled spirits, for distilled spirits we have to await returns from State tax commissioner, and not having received them at that time, we estimated them?

Q. As a point of fact the distilled spirits was not on your levy?

A. No sir, but we had data.

Q. It was a mere estimate?

A. Yes sir, in fact the State commissioner very seldom sends them in time to be incorporated in the levy.

Q. Well Mr. Green, no taxable party of course can be liable for taxes until his property has been put on the tax list?

A. I think that is a question of law sir.

Q. Is not the method of the county commissioners to put the property of the taxable parties of the county upon the tax list?

A. The property returned to them by their assessors is listed on their ledger, but the returns of the spirits, we get from the tax commissioner.

Q. You could not charge anybody in the county for taxes for real estate until the assessment is made and that real estate placed upon the tax books?

A. We never do, we never assess real estate until it is gone through the form of being returned to us either by the assessors or owners voluntarily, and charged upon the proper books.

36 Q. I suppose the reason is under the circumstances you have no right to do it?

Objected to.

WITNESS: I can tell you what the habit and practice is— the prac-

tice with real estate and fixed property such as furniture and those things comes under the head which you described as taxes not being demanded until property is listed and charged on our books: in the matter of spirits we are unable to do it.

Q. You are able to do it when you get the returns from the State tax commissioner?

A. The law of 1892 makes us wait until the taxes are returned before we can demand taxes from owners of spirits.

Q. The levy of 1900 had been entirely completed before the State tax commissioner returned assessment on spirits of the defendants.

A. Yes sir, it was made upon from all the knowledge we had at that time.

Q. Does not the law provide that the county commissioners in making their annual levies shall levy the tax on distilled spirits which have been returned by the State tax commissioner upon the valuations returned by the State tax commissioner.

A. We had made the effort to procure them from the State tax commissioner, from the letter which I read to you, he promised to send them to us and he failed to keep his promise.

Q. Then your custom is first to list the property on the tax list before the levy is made?

A. All the property, the value and nature of which we can ascertain, we do, yes.

Q. Well is each individual who pays taxes put upon the tax list for property on which he is taxed?

A. As far as we are able to find his name out, and the nature and amount of his property, we do, yes.

Q. So the amount is made out from the tax list?

A. As far as possible; on mortgages we also have to make an estimate of what the amount is to be.

Q. You are now speaking of what the rate of taxation should be?

37 A. We have to do that Mr. Fisher.

Q. I mean to say in order to arrive at what the rate of taxation for the year should be, you are obliged to make estimate?

A. That is so.

Q. But you do not undertake to tax everybody whose name does not appear, or property does not appear on the tax books?

A. We do not consider tax on it until we receive the names and amounts of individual owners of property—the law of 1892 prevents us from taxing them against the individual until we receive the returns.

Re-direct examination.

(By Col. McIntosh:)

Q. Did I understand you to say Mr. *Mr.* Green, as a matter of fact, these returns on spirits frequently did not come in until after you made your levy?

A. That is my belief sir.

Q. And you are compelled to make them upon the estimates?
A. We have to do that in the absence of the specific returns.
Q. Were the Carstairs Brothers familiar with these proceedings prior to 1900?
A. I can hardly say that. I only came in the office on January 1st, 1900.

The plaintiff then closed.

The defendants then proved by JOHN H. CARSTAIRS, one of the defendants that his firm had owned the distillery at Highlandtown, known as the Robert Stewart distillery, since Dec. 1897, but did not get title to it until January 1898; that previous to that it was owned by the Robert Stewart Distilling Company from 1894, and that Robert Stewart built it in 1885, and conducted it in his name until 1894, and that the defendants had operated it since January 1898, and that they made a return to the State tax commissioners of the spirits on hand on January 1, 1900.

The defendants' counsel then asked the witness the following questions:

Q. Did you own any of these spirits that were so returned?

To which question the plaintiff objected.

And the court sustained the objection, and refused to allow
38 the question to be put or answered: to which ruling of the court the defendants excepted, and prayed the court to sign and seal this their first bill of exceptions, which is done accordingly this fifth day of February, 1902.

N. CHARLES BURKE. [SEAL.]

Defendants' Second Bill of Exceptions.

After all the evidence set forth in the defendants' first bill of exceptions had been offered, which is hereby made a part hereof as fully as if it were incorporated herein, and after the ruling of the court set forth in said first bill of exceptions, the defendants made the following offer:

Mr. FISHER: If your honor pleases, to make our proposition clear I will submit the following offer:

The defendants offer to prove by the witness, John H. Carstairs and by Mr. Donaldson that the defendants on the first day of January, 1900, did not own any of the whiskey mentioned in the tax bill offered in evidence, and in the return made by the defendants to the State tax commissioner in January, 1900, excepting 489 barrels, and that the defendants have not owned any of said spirits since that time excepting those 489 barrels, but that all of said whiskey, excepting said 489 barrels belonged to other persons unknown to the defendants, who held negotiable warehouse certificates therefor, evidencing their ownership.

To which *after* the plaintiff objected and the court sustained the objection, and refused to permit the evidence offered to be given, and the defendants excepted to the said ruling of the court, and prayed the court to sign and seal this their second bill of exceptions, which is done accordingly this fifth day of February, 1902.

N. CHARLES BURKE. [SEAL.]

Defendants' Third Bill of Exceptions.

After all the evidence mentioned in the first bill of exceptions had been given, which is hereby made a part hereof as fully as though incorporated herein, and after the ruling of the court mentioned in said first bill of exceptions, and after the offer of evidence, made by the defendants set forth in the defendants' second bill of exceptions, which is hereby made a part hereof as fully as
39 though incorporated herein, and after ruling of the court therein mentioned the defendants then proved by Thomas Donaldson that he was the manager of the defendants' distillery and that the defendants made a report to the State tax commissioner in the year 1900 of the spirits on hand, and that he knew what whiskey was mentioned in the report, and that it was in the different bonded warehouses on January 1, 1900, and continued therein, except that some little had been delivered out since that date.

The witness was then asked to describe to the jury the control the internal revenue officials of the United States had, and exercised over the distillery and bonded warehouses, and the plaintiff objected to said question, and the court sustained the objection, to which ruling of the court the defendants excepted, and prayed the court to sign and seal this their third bill of exceptions, which is done accordingly this fifth day of February, 1902.

N. CHARLES BURKE. [SEAL.]

Defendants' Fourth Bill of Exceptions.

After all the evidence mentioned in the defendants' first and third bills of exceptions had been offered, and after the offer of evidence referred to in the defendants' second bill of exceptions had been made, and the ruling of the court thereon, which are hereby made part thereof as fully as though incorporated herein, the following agreement of facts was offered in evidence:—

It is agreed as facts to be submitted to the jury in this case along with other facts, to be proven at the trial that the defendants in January 1900, made a return to the State tax commissioner under the act of 1892, c. 704, of the amount of spirits in their bonded warehouses on January 1st, 1900, without specifying whether the same were owned by the defendants or other persons, or were merely in their custody as the owners or custodians of said warehouses: and that the State tax commissioner valued said spirits at $8.00 per bar-

rel, but that in consequence of the decision of the court of appeals of Maryland, in the case of The Monticello Distilling Company *vs.* Baltimore City, the State tax commissioner did not transmit a copy of said valuation, to the county commissioners of Baltimore county until February 28th, 1901, on which date he did transmit a copy of said valuation, and that a copy of the document so transmitted to the said commissioners by the State tax commissioners on said date is hereto attached, and also a copy of said return by the defendants to said State tax commissioner.

D. G. McINTOSH,
Plaintiff's Attorney.
FISHER, BRUCE & FISHER,
Defendants' Attorneys.

40 Certified duplicate.

S. R. WATERS, *Clerk.*

Form for the Assessment of Distilled Spirits.

State of Maryland, Treasury department, office of the State tax commissioner.

ANNAPOLIS, MD., *Jan'y 9th*, 1900.

To Carstairs Brothers, distillers, Highlandtown, Baltimore county

DEAR SIR-: The following extracts from chapter 704, of the acts passed at the January session, 1892, of the General Assembly of Maryland, are given in order to exhibit the proper manner of making your return.

SEC. 1. Be it enacted by the General Assembly of Maryland That there shall be levied and collected upon all distilled spirits in this State as personal property the same rate of taxation which is imposed by the laws of the State on other property for State and county purposes.

SEC. 2. And be it enacted, That for the purpose of such assessment and collection it shall be, and it is hereby made the duty of each distiller, and of every owner or proprietor of a bonded or other warehouse, in which distilled spirits are stored, and of every person or corporation having custody of such spirits, to make report to the State tax commissioner on the first day of January of each and every year, of all the distilled spirits on hand at such date and the tax for the ensuing year from the said first of January, shall be levied and paid on the amount of distilled spirits so in hand, as representing the taxable distilled spirits for such year, provided, however, that the same distilled spirits shall not be taxed twice for the same year.

SEC. 5. And be it enacted, That no distiller, owner or custodian of such distilled spirits, shall permit the same to go from his possession or control without the report and payment of tax hereinbefore provided for, and any person or persons or corporation violating the

provisions of this section, shall be proceeded against by the proper officers authorized to receive said taxes, by distraint for the entire amount of the taxes assessed for the current year, and thereupon all such taxes shall become and be immediately due and collectable by restraint, together with all costs attending the proceedings, and a further penalty of five hundred dollars, for each such violation.

SEC. 6. And be it enacted, That any person or corporation making any false report or return, as to, or of the matters herein
41 provided for shall be deemed guilty of a misdemeanor and subject to indictment therefor, and upon indictment and conviction shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense.

SEC. 7. And be it enacted, That it shall be the duty of all distillers, warehousemen, and others to exhibit all necessary information, on oath if required, to the appeal tax court of Baltimore city, the several boards of county commissioners in their respective counties where distilleries are situate, and to any authorized officer proceeding to execute a distraint or to collect the tax imposed under this act; and a failure so to do upon demand made, shall be deemed a misdemeanor, and subject to indictment, and upon indictment and conviction shall subject the offender to a fine of not less than fifty dollars nor more than five hundred dollars.

SEC. 8. And be it enacted, any warehouseman, custodian or agent, paying the tax on distilled spirits herein provided for shall have a lien upon the distilled spirits covered by such tax.

You are accordingly hereby requested to answer the subjoined interrogatories on the annexed blank for that purpose, having done so, to sign the same, and take the subjoined oath before a justice of the peace, or notary public, and return the same promptly to this office, as required by law.

Very respectfully, &c.,

ROBERT P. GRAHAM,
State Tax Commissioner.

Questions and Answers.

Q. 1. What is the name of the distillery which you are operating either as owner, proprietor, lessee, agent or otherwise, and in what capacity are you operating said distillery?

A. 1. Robert Stewart distillery; operating as owners.

Q. 2. Where is said distillery located, and what is your post office address?

A. 2. Highlandtown Md.; Highlandtown Md.

Q. 3. If said distillery is conducted by a corporation, please state its corporate name, and the title of the office you hold in said corporation?

A. 3. Not a corporation.

Q. 4. State what number of barrels, half barrels, quarter barrels,

casks and packages of distilled spirits, and of what kind, you
42 had on hand, or in your custody, or stored in any bonded or other warehouse, on the first day of January in the year 190- —and where stored, and when distilled. When casks and packages are named give the number of gallons therein.

A. 4. 14.545 bbls.; 2.665 half bbls.

J. H. CARSTAIRS,
Of the Firm of Carstairs Brothers.

Affidavit.

STATE OF PENNSYLVANIA, *To wit:*

On this 11th day of January A. D. 1900, before me the subscriber a notary public for the State of Pennsylvania in & for the Commonwealth of Pennsylvania, personally appeared J. H. Carstairs, and made oath according to law that the within statements contained in his answers to the above interrogatories are true to the best of his knowledge and belief.

Sworn before

[NOTARIAL SEAL.] ARNOLD KATZ,
Notary Public.

On the back thereof was the following:

Copy.

Report of Carstairs Brothers, Owners of Robert Stewart Distill-ry, Highlandtown, Md., for the Year 1900.

Received January 12th, 1900.

Certified Duplicate.

State of Maryland, Treasury department, office of the State tax commissioner.

ANNAPOLIS, MD., *Feb. 28th*, 1901.

To hon. county commissioners of Baltimore county.

GENTLEMEN: I hereby certify that, agreeably to the provisions contained in chapter 704, of the acts passed at the January session 1892, of the General Assembly of Maryland, Carstairs Brothers (owners of Robert Stewart distillery, make report to the State tax commissioner that said Carstairs Brothers had on hand on the 1st day of January 1900, 1587$\frac{1}{2}$ barrels of distilled spirits, which
43 I, as said tax commissioner, have valued for the purpose of taxation at $8, per barrel, amounting in the aggregate to $127,060.00.

You are directed and required by said act in making your annual levy to impose upon the spirits above mentioned and valued, the State taxes, as the same are prescribed by law, and such municipal or county taxes as all other personal property located within the bounds of any municipality or county in this State is subscribed to.

(Seal's place.) As witness my hand and the seal of my office this 28th day of Feb. 1901.

ROBERT P. GRAHAM,
State Tax Commissioner.

S. R. WATERS, *Clerk.*

The defendants then recalled John H. Carstairs to the stand and he testified that the first notice which the defendants had that the whiskey mentioned in said return was valued by the State tax commissioner was by the receipt by them on June 14th 1901, of the tax bill sued on, that after they made their return they heard nothing more of it until said date, and thought the matter was done with, because the law in Baltimore had been declared unconstitutional.

The defendants then closed.

The plaintiff then called James E. Green, who proved that when returns were made to the office of the said county commissioners by the State tax commissioner, it was not the habit or practice of the county commissioners to send out notice thereof to the persons to be affected by such returns.

The plaintiff then proved that the term of Alfred Fowble as county treasurer and collector had expired, and that Willis B. Cochran was the county treasurer and collector. Thereupon the court directed the declaration to be amended by striking out the name of Alfred Fowble, as treasurer and collector of Baltimore county, and inserting the name of Willis B. Cochran, to which direction and ruling of the court the defendants objected, but the court overruled their objection, and the defendants excepted, and the amendment was made, and the defendants prayed the court to sign and seal this their fourth bill of exceptions, which is done accordingly this fifth day of February, 1902.

N. CHARLES BURKE. [SEAL.]

44 *Defendants' Fifth Bill of Exceptions.*

After all the evidence mentioned in the defendants' first, third and fourth bills of exceptions had been offered, and after the offer, of evidence mentioned in the defendants' second bill of exceptions had been made, and after the rulings of the court on said several bills of exceptions mentioned, all of which are made part hereof as fully as though incorporated herein, and all evidence on both sides having been concluded, the plaintiff then offered the following prayers.

Plaintiff's 1st Prayer.

If the jury find that the State tax commissioner on or about the 28th day of February, 1901, made return to the county commissioners of Baltimore county of the number of barrels of spirits and the valuation set thereon by said tax commissioner held by the defendants, or in their custody on the first day of January 1900, as appears by the return offered in evidence and that the county commissioners of Baltimore county in making their levy for State and county taxes for the year 1900, included in their said levy the sum of four thousand five hundred dollars for taxes due by all the distilleries in Baltimore county, including the taxes estimated to be due by the defendants for that year; and if the jury shall find that defendants have not paid the taxes on said spirits so returned by the tax commissioners, or any part thereof, then the verdict of the jury in this case should be for the amount of taxes claimed by the plaintiff with interest thereon from June 14th, 1901.

(Granted)

Plaintiff's 2nd Prayer.

If the jury shall find that the defendants in the month of January, 1900, made return to the State tax commissioner, under the act of 1892, chapter 704, of the amount of spirits in their bonded warehouse on the first of January, 1900, and that the State tax commissioner valued said spirits at eight dollars per barrel, and that on the 19th day of April, 1900, the State tax commissioner wrote to the county commissioners of Baltimore county, saying that he would transmit the returns of spirits held in the warehouses in Baltimore county the following week, and that the same was not sent until on or about 28th February, 1901, and if they further find that the county commissioners in making their levy for State and county taxes for the year 1900, made the same upon an estimate of four thousand five hundred dollars due for spirits by the distilleries situated in Baltimore county, and included therein the taxes estimated as proper to be levied for taxes due by defendants for spirits
45 for the year 1900 under the act of 1892, chapter 704, aforesaid, and if they find that said defendant has not paid taxes on said spirits for the year 1900, then the verdict in this case should be for the plaintiff for the amount of the tax claimed with interest thereon from June 14th, 1901.

(Granted).

And the defendants offered the following prayers:

Defendants' First Prayer.

The defendants pray the court to instruct the jury that there can be no recovery in this action by the plaintiff because it appears by the evidence offered by the plaintiff that he is not at this time the treasurer and collector of Baltimore county.

(Refused)

Defendants' Second Prayer.

The court instructs the jury that there is no evidence in this case that the defendants were the owners on January 1st, 1900, or subsequently thereto, of any of the whiskey mentioned in the tax bill and return of the tax commissioner offered in evidence, and that it would be contrary to the law of the land, and a taking of property of the defendants without due process of law, to require them to pay taxes upon whiskey in the defendants' bonded warehouses on January 1st, 1900, or thereafter belonging to persons other than the defendants, and their verdict must therefore be for defendants.
(Refused).

Defendants' Third Prayer.

The court instructs the jury that there is no evidence in this case that the State tax commissioner was authorized by law to value the spirits mentioned in the evidence to the defendants, or that the county commissioners were authorized by law to levy the tax claimed by the plaintiff upon said spirits, and their verdict must therefore be for the defendants.
(Refused).

Defendants' Fourth Prayer.

The court instructs the jury that there is no evidence in this case that the spirits reported to the State tax commissioner in
46 the report made to him by the defendants in the month of January, 1900, were included in the annual levy made by the county commissioners of Baltimore county for taxes for the year 1900, and that their verdict must therefore be for the defendants.
(Refused).

Defendants' Fifth Prayer.

The court instructs the jury that there is no evidence in this action that there was any lawful levy of the taxes claimed in this action upon the spirits mentioned in the evidence, and their verdict must be for the defendants.
(Refused).

Defendants' Sixth Prayer.

The court instructs the jury that there is no evidence in this case that the defendants had notice that the spirits mentioned in the evidence had been valued to them by the State tax commissioner, or that they were assessed therewith until they were presented by the plaintiff with the bill for taxes sued for in this case, and their verdict must therefore be for the defendants.
(Refused).

Defendants' Seventh Prayer.

The court instructs the jury that there is no evidence in this case that the State tax commissioner transmitted to the county commissioners of Baltimore county, within the year 1900, any copy of any valuation made by him of the spirits mentioned in the report made to him by the defendants in the year 1900, as stated in the evidence, and their verdict must be therefore for the defendants.

(Refused).

Defendants' Eighth Prayer.

The court instructs the jury, that the plaintiff is not entitled to recover in this action because.

1. There is no evidence that the defendants were on the
47 first day of January, 1900, or thereafter, the owners of any of the spirits mentioned in the evidence.

2. Because there is no evidence of any obligation on the defendants to pay the taxes claimed in this action.

3. Because there is no evidence in this action that the State tax commissioner had lawful authority to value the spirits mentioned in the evidence to the defendants, or that the defendants were lawfully assessed therewith; and that the verdict of the jury must be for the defendants.

(Refused)

And the court granted both the plaintiff's prayers, and rejected all the prayers of the defendants; to which ruling of the court in granting the plaintiff's prayers and in rejecting those of the defendants, the defendants excepted; and prayed the court to sign and seal this their fifth bill of exceptions, which is done accordingly this fifth day of February, 1902.

N. CHARLES BURKE. [SEAL.]

I agree that the above bills of exception be signed.

D. G. McINTOSH,
Att'y for Pl'ff.

Whereupon, it is ordered by the court here, that a transcript of the record and proceedings in the plea aforesaid, with all things thereunto relating, be transmitted to the next court of appeals of Maryland; and the same is transmitted accordingly.

Test: N. BOSLEY MERRYMAN, *Clerk.*

STATE OF MARYLAND, *Baltimore County,* } *To wit:*

I, N. Bosley Merryman, clerk of the circuit court for Baltimore county, hereby certify that the aforegoing is a true transcript of the record and proceedings in the therein entitled cause, in accordance with the rules of the court of appeals relating thereto.

[SEAL.] In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court this 29th day of March, A. D. 1902.

N. BOSLEY MERRYMAN, *Clerk.*

Plaintiff's costs	$23.77
Defendants' "	6.95
Transcript	25.00

48 And afterwards to wit, on the 19th day of June 1902 the following judgment was made by the court of appeals, of Maryland, and entered of record to wit:—

This cause came on to be heard was taken up and argued by counsel and on consideration, whereof the court finds no error apparent in the record, of proceedings aforesaid, nor in giving the judgment aforesaid. It is therefore considered by the court of appeals of Maryland, on the 19th day of June, A. D. 1902, that the said judgment be and the same is hereby affirmed, and that the costs above and below be paid by the appel-ants and that execution issue accordingly.

And on the same day, to wit, June 19 A. D. 1902, there was filed in the office of the clerk of the said court of appeals a certain opinion in words and figures, following to wit:—

49 Court of Appeals of Maryland, April Term, 1902.

DANIEL H. CARSTAIRS and JOHN H. CARSTAIRS, Trading as Carstairs Brothers,
vs.
WILLIE B. COCHRAN, Treasurer and Collector of Baltimore County.

Judge PEARCE delivered the opinion of the court:

This appeal constitutes the third attack upon the validity of the act of 1892 ch. 704, as now amended by the act of 1900 ch. 320, being secs. 204 to 213 inclusive of the supplement to the Public General Code of Maryland, providing for the collection of taxes upon distilled spirits in this State.

The appellants admit that all the features of the law which are here assailed upon constitutional grounds, were considered by the court in Monticello Co. *vs.* Balt. City, 90th Md. 416, and that while the act was there held invalid, *as it then stood*, because of the failure to provide for a hearing in respect to the valuation to be placed on the spirits for the purposes of taxation, it was declared to be "in other respects free from constitutional objections." They contend however that the *sole ground of the decision in that case* was the failure to provide for notice of assessment (a defect which has since been cured by the act of 1900 ch. 320,) and that the expression of
50 opinion upon any other point was not involved in the decisive objection on which the judgment was reversed, and was there-

fore an "*obiter dictum*" which should not preclude them from asking, or the court from granting, a reconsideration of what was not then, but necessarily now is, the decisive point in controversy.

We cannot agree that the expression of opinion referred to was an *obiter dictum*. All the constitutional objections which are here urged, were urged in that case by the late Judge Fisher with all the ability and force for which he was so justly distinguished, and the ruling upon the prayers, which there constituted the single exception, required the consideration by the court of all those objections. It may be difficult to frame a concise definition of an "*obiter dictum*" applicable to every such expression of opinion, and some courts incline to the rule that the most deliberate expression of opinion, upon a question distinctly raised in the record, and fully argued by counsel, may nevertheless be regarded as a dictum, unless essential to the actual disposition made of the case. But as Bowie well says, "It is difficult to see why, in a philosophic point of view, the opinion of the court is not as persuasive *an* all the points which were so involved in the cause that it was the duty of counsel to argue them, and which were deliberately passed on by the court, as if the decision had hung upon but one point;" and
51 in Maryland the rule is in accord with this view. In Alexander *vs.* Worthington, 5th. Md. 489, it is said, "All that is necessary in Maryland to render the decision of the court of appeals authoritative on any point decided, is to show that there was an application of the judicial mind to the precise question adjudged; and in Michael *vs.* Morey, 26th. Md. 261, it was said that a decision there cited, could not be said to be *obiter dictum*, "as the question was directly involved in the issues of law raised by the demurrer to the bill, and the mind of the court was directly drawn to, and distinctly expressed upon the subject." But as the question here is said to be one of much importance to the owners and custodians of this species of property, and is certainly important to the State, which derives all its needed revenues from taxation, and as it has been argued here with great earnestness and conspicuous ability, we shall state as briefly as possible the reasons which induce us to adhere to the views heretofore expressed. The provisions of the act of 1892, ch. 704, were sufficiently detailed in the opinion rendered in Monticello Co. *vs.* Baltimore City, *supra*, and that statement will be adopted for this case without repeating it here. That act is assailed here as it was there, as fundamentally vicious, and upon precisely the same grounds, with the exception of the want of notice of assessment, which has been cured by the act of 1900, ch. 320.

These grounds are two-fold; first, that it lays a tax upon prop-
52 erty, and not upon the *the* owner of the property, and second, that it compels one, not the owner of the spirits, to pay the tax due by the owner who is usually unknown to the party compelled to pay.

Upon the first of these grounds we said in the Monticello case: "Taxes of the kind here dealt with are, under article 15 of our declaration of rights, levied not on *things*, but on the *owners* of things,

and the value of the things owned fixes the measure of the owner's liability to contribute in taxes towards the support of the Government. This is an axiom of political economy, no less than a fundamental provision of our organic law. Appeal Tax Court, *vs.* Patterson, 50th. Md. 366; U. S. Elec. Power and Light Co., 79th. Md. 63. It cannot, therefore, be presumed that the legislature deliberately intended to disregard this principle, and to place the tax on the spirits, and not on the owners of them. 'Every person in the State,' says the 15th article of the declaration of rights, 'or persons holding property therein, ought to contribute his proportion of public taxes for the support of Government according to his actual worth in real and personal property.' It is the individual, then, who is *in* the State, or who holds property *therein*, that is liable to taxation. He may be out of the State; he may be a non-resident, but if he has property situate here, he is as much bound to contribute to the support of the Government according to the value of that property as though he were permanently domiciled within the limits of the Commonwealth. The purpose of the act, obviously,
53 was to raise a revenue from the owners of a class of property which up to the time of its adoption had not been reckoned in the assessment upon its owners; and the peculiar nature of the property itself, "the known difficulty in tracing its ownership, and "the ease and facility with which the title to it is transferable, were "all vital elements to be considered in devising a scheme for sub-"jecting the persons who owned, had possession of, or controlled "these distilled spirits, to the obligation of contributing their just "share of the public burden. Though the language employed, like "that used in many of the other assessment laws, if read literally "would indicate an intention to impose the tax on the property, and "not on the owner of it, that is not its meaning when considered in "connection with the settled policy of Maryland as announced in "the declaration of rights, and we hold therefore, that the tax is "upon the owner of the spirits, and not specifically upon the "spirits."

We have reproduced this passage from the opinion in the Monticello case, as a clear, adequate, and satisfactory exposition of the correspondence of the statute, in this regard, with the 15th. art. of the declaration of rights, upon which, after re-consideration of the subject, we feel we can safely repose. In support of this confidence we may appropriately refer to the language of Appeal Tax Court *vs.* Patterson, *supra*, in which the court, quoting from Cooley on Taxation, declares that protection of the Government is the consid-
54 eration for which taxes are paid; that this protection may be either to the rights of person, or to the rights in property, and that taxes may consequently be imposed when either person or property is within the jurisdiction, and that it is competent for any State to provide that tangible personal property situated within it may be taxed there. The court then proceeded to say: "The 15th. article "of our declaration of rights is apparently a modification of one of "the four maxims with regard to taxation in general, laid down by

"Adam Smith in the Nature and Causes of the Wealth of Nations: "That distinguished author's first maxim is, 'The subjects of every "State ought to contribute towards the support of Government "as nearly as possible in proportion to their respective abilities; "that is in proportion to the revenue which they respectively enjoy "under the protection of the State.'" * * * The analogy of thought and expression here is marked, and throws a clear light upon the meaning of our 15th. article. And so in Ward *vs.* Const, 10th. B. & C. 635, where a tax was payable by all persons "having or holding lands," the words were held to apply to all persons receiving the rents and profits, and so to embrace both lessor and lessee, according to the value of their respective estates or interests in the lands.

The argument of the appellants upon this point as stated in the language of their brief, is, that this act compels one person to contribute *not his proportion*, but *another person's proportion* of
55 public taxes for the support of Government, by requiring him to act as collector. But this statement confounds *contribution* and *payment* and wholly omits the consideration of *of* the lien given the distiller upon the property in his custody, which effectually protects him against the *contribution* of another's proportion of taxes, while it *secures* to him the repayment of that which he is required to collect and pay upon the faith of the lien created in his favor. The contribution to public taxes required of every property owner according to his actual worth in real and personal property, necessarily requires uniformity of taxation and though both the standard by which valuation is made, and the rate of tax imposed, be uniform in each class, yet the uniformity required by art. 15 as a vital element of "just proportion" cannot be attained unless *all* the tangible property in the State is so valued and assessed, and unless its owner wherever he may be does contribute his proportion according to the value of that property. So far then, from the 15th. article forbidding the tax here sought to be recovered, it imperatively requires that some adequate means be devised for enforcing its payment.

In reference to the objection that the act in question takes one man's property to pay the debts of another, we said in the Monticello case: "The requirement that the distiller shall pay the tax for "the owner is neither unreasonable nor unlawful, because it simply
"makes him the agent of the State to collect for the State,
56 "precisely as a corporation is made an agent to collect from "its stockholders the tax due by them on the stock which "they hold. The legislation of 1892 with respect to distilled spirits, "is, in this particular, identical with the provisions of the code re- "lating to the tax on shares of stock, and these latter have been "upheld by this court as valid enactments. Casualty Ins. Co.'s case "82 Md. 564; Amer. Coal Co. *vs.* County Comms. 59 Md. 197."

By sec. 138 of art. 81, the tax upon shares of stock in home corporations, held by non residents, is to be levied and collected from such corporation, and may be charged to the account of such stock-

holders, and shall be a lien on the stocks therein held by them respectively until paid; and sec. 141 makes a similar provision as to resident stockholders, except that no lien is given as to them. In 59th. Md., *supra*, the court said: "The statute having created the duty and obligation to pay, when the shares of stock are assessed to the individual owners, that duty and obligation on the part of the corporation may be enforced by a proper action at law, the plaintiff in such case showing the right claimed to be within the statute." In the Casualty Co.'s case, *supra*, the decision in 59th. Md. was confirmed and reference was made to Nat. Bank *vs.* Kentucky, 9th. Wall. 353, in which the court said: "In the case of shareholders not residing in the State, it is the only mode in which the State can reach their shares for taxation;" and Judge Cooley says on page 373 of his work on taxation: "Statutes sometimes provide
57 that tangible personal property shall be assessed wherever in the State it may be, *either to the owner himself* or *to the agent or other person having it in charge; and there is no doubt of the right to do this, whether the owner is resident in the State or not*," and numerous cases are cited in support of this statement of the law.

The case of Hartman *vs.* Greenhow, 102 U. S. 684, was much relied on by the appellant to show that the Supreme Court denies this doctrine, but it cannot be properly so regarded. In that case, Hartman was the owner of certain overdue coupons cut from bonds issued by the State of Virginia. The bonds to which said coupons were originally attached were held by a third party, and Hartman tendered to the treasurer of Richmond these coupons in payment of taxes due by him, they being receivable by law for that purpose. The law however forbid the treasurer to receive such coupons in discharge of taxes, without first deducting the taxes due on the bonds to which the coupons were originally attached, and he claimed the right to make such deduction from these coupons. It was determined that the coupons held by Hartman being negotiable when detached from the bonds, and passing by delivery, ceased to be incidents of the bonds, and were distinct contracts imposing separate obligations upon the State, and that the holder of the contract evidenced by the detached coupons, could not be required to pay the taxes levied upon the contract evidenced by the bonds, and
58 held by a stranger. But there is no analogy or similarity between that case, which deals with the rights of a holder of a negotiable instrument, and one in which the agent or custodian of another's tangible property is required to collect and pay the tax upon that specific property in his possession and control, in consideration of a lien thereon created for his protection. The appellants contend further however that there is a great and fundamental distinction to be observed between the relation of the distiller to his vendee, and that of the corporation to its stockholder, in that the distiller has no funds of his vendee in his hands out of which he can pay the tax, whereas, when the corporation pays the tax due from its stockholder, it pays it with money of the stockholder's, since every stockholder is an owner of an undivided interest in the property of

the company. But this contention will not bear analysis. In New Orleans *vs.* Houston, 119 U. S. 265, where a tax assessed upon the shares of stockholders was required to be paid by the corporation, which was entitled to charge the same to the account of the stockholder, and to collect it from him, the same theory was urged in objection as is here presented, but the court said: "This payment is to be made irrespective of any dividends or profits payable to the shareholder out of which it could be repaid." And this is obviously true in every such case, since the tax may be payable at any period not coincident with the possession by the corporation of any dividends or profits payable to the stockholder,
59 that is, between the payment of one dividend, and the declaring of another—or at a period when the usual dividends may not be earned, or have been passed, and when therefore there is no fund in the hands of the corporation belonging to the stockholder out of which the tax can be presently repaid; and in such case, even though the stockholder be the owner of an *undivided* interest in the property of the corporation, such an interest would not provide a fund pres-ntly due from the corporation to the stockholder, and applicable to the repayment of the tax; and it would therefore be necessary in the language of sec. 138 of art. 31 "to charge the same to the account of the stockholder," to be *thereafter* repaid to the corporation, either by deduction from the next dividend, however remote, or from the next distribution of undivided profits, or from the undivided interest of the stockholder in the general property of the corporation, upon liquidation, or to be recovered by suit as against any other debtor—where no lien is given for repayment.

The confidence of the appellants therefore, that no case can be found in which one person, out of his own money, has been required to pay a tax due from another, does not appear to be justified.

The principle and policy of this legislation is not new in this State and the resistance to it in this case is due, we apprehend, to its application to a species of property of large value which has
60 heretofore escaped taxation. Section 66 of art. 81 of the Code provides that "the tenant or person holding any leasehold estate, shall pay to the collector the taxes levied upon the demised premises, and shall have his action against the landlord for the sum so paid, or may deduct the same out of the rent reserved, unless otherwise agreed between the lessor and lessee." The alternative remedy given—of deduction from rent or recovery by action, is a distinct recognition of the fact that in such cases the taxes may sometimes be payable when there is no rent due and when therefore the remedy by deduction would not be available. This provision of law has been in force since 1812, when it was made the duty of the tenant holding any leasehold estate "to pay the collector the sum valued for the interest or estate of any landlord," the language having since taken the form now appearing in the Code, and it was before this court in P. W. & B. R. R. *vs.* Appeal Tax Court, 50th. Md. 411, where Judge Alvey said: "This provision was intended as a means of facilitating the collection of taxes, there being many cases where the

landlord might not be known or might be absent." The principle embodied in the act of 1892 having thus been upon the statute book, unquestioned, so far as we are advised, for nearly one hundred years; being supported by the unqualified authority of Judge Cooley in his work on taxation, and being impliedly recognized as a valid legal principle in 50th. Md., *supra*, we could not now hesitate to uphold it. Nor can we regard it as a hardship upon the distiller that he should be required to pay
61 this tax in consideration of the lien given for its repayment. As was said in the Monticello case, the purchaser of the warehouse certificate is chargeable with knowledge of what the statute provides, and it is thus made his duty to furnish the distiller with the necessary funds for the payment of this tax when demandable from the distiller. The holder of the certificate has *actual* knowledge of the quantity of spirits belonging to him in the distiller's hands, and the statute gives him *constructive* notice of the time when the tax is payable. Upon application to the distiller therefore at the proper time, he can learn the amount of the tax payable by him thereon—and upon his failure to remit to the distiller, the latter may enforce his lien, and it is no legal objection to the validity of the law that the enforcement of the lien may be attended with some delay and that the costs incurred must await the completion of this process. We are not informed how these warehouse certificates are framed, but the distiller may if he sees fit, have them so drawn as to impose upon the purchaser by express stipulation, the duty of paying to the distiller at stated periods such amount of money upon each barrel of spirits held by warehouse certificate, as may be deemed adequate to protect the distiller against this tax, and to provide for immediate sale in default of such payment; and it is no answer to this to say that the Government tax must also be paid before such sale can be made, since prompt sale will always ensure the immediate re-
62 imbursement of both taxes, and will avoid all cost of insurance and risk of leakage urged by the appellants as destructive of all value to the lien given.

Finally, in the case of Commonwealth *vs.* Gaines, 80th. Ky. 489, a statute in every respect similar to the act of 1892 has been declared constitutional and valid. In that case, one of the questions considered by the court was stated by it in these words. "Was the whiskey rightfully assessed to the appellees, who are the owners, on the ground alone that they were the possessors of it on January 10th. 1880?"; and in answering this question the court said: "The relative rights which may exist 'between the owner and possessor of the whiskey cannot affect the power of the State to authorize its assessment to either of them as the legislature may deem most prudent and apt to result in securing taxes from them. Indeed, convenience and necessity unite in support of the well established doctrine that the taxing power may impose taxes upon persons or property, and may adopt remedies for their collection which operate against the person of the owner, or the possessor, or the thing taxed or all of them combined. If this were not the case, non resident

owners, from the proximity of the States, and the commercial rights of all citizens in each, would escape taxation on their movable property produced by our own soil, while it receives the protection of our laws." It has been suggested by the appellants that this decision has no application in this case, because the constitution of Kentucky does not, as ours does, require that taxes be imposed upon the
63 owner of property and not specifically upon the property itself. But we have already said in the Monticello case, and have here repeated, that we hold this tax to be upon the owner of the spirits and not upon the spirits specifically, and the Kentucky case is directly in point—even if we disregard that part of the opinion, which sanctions the imposition of a tax upon either persons or property.

The demurrer to the ame-ded declaration, and the first, second, and third exceptions to the exclusion of evidence raise the question whether the appellants as the possessors or custodians of these spirits can be legally required to collect from the owners and pay to the proper officer, the tax due from the owners. The appellants' second, third and eighth prayers raise the same question at the close of the case, and it follows from what we have said that there was no error in overruling the demurrer, in excluding the testimony offered under the first, second and third exceptions to show that defendants were not the owners of the spirits, nor in the rejection of defendants' second, third and eighth prayers; and for the same reason there was no error in granting the plaintiff's first prayer which embraces all the facts necessary to a recovery, assuming the law upon which the claim is based to be a valid enactment.

This suit was instituted July 11th. 1901 by Alfred Fowble then treasurer and collector of Baltimore county, and the trial was had on February 5th. 1902. During the course of the trial the
64 plaintiff proved that the term of Fowble had then expired, and that Willie B. Cochran had succeeded him as treasurer and collector. Thereupon the court directed the declaration to be amended by striking out the name of Alfred Fowble as treasurer and collector, and inserting the name of Willie B. Cochran—to which direction the defendant objected, but the court overruled the objection, and the amendment was made; and this is the ground of the fourth exception.

Ordinarily an entirely new plaintiff cannot be made by amendment, but the local law of Baltimore county creating the office of treasurer and collector provides that "in all cases where a treasurer and collector has taken steps for the enforcement of the payment of said taxes either by notice, levy, advertisement, *or other proceedings* and his term of office shall expire before said proceedings are completed, the newly elected and qualified treasurer and collector is empowered and required to continue and complete said proceedings in the same manner as is now provided by law, and with all the power and authority had in law by the retired treasurer and collector during his term of office for that purpose." Under such a remedial statute every implication is to be made to accomplish its

purpose, but in view of the emphatic and comprehensive language used here there is no room for implication, the authority being express. There was no error then in this ruling, nor in the rejection of defendant's first prayer which denied the right to recover because Fowble's term had expired.

65 The plaintiff's second prayer, and the defendant's fourth and fifth prayers, present opposing theories as to the validity of the levy made for the year 1900, by reason of the failure of the State tax commissioner to send to the county commissioners his return of distilled spirits in defendant's warehouse, until Feb'y 28th, 1901.

Revenue statutes are to be construed liberally to carry out the purposes of their enactment. U. S. *vs.* Hodson, 10th. Wall. 395, and if we should hold this levy invalid for the reason assigned, we should by means of strict construction, permit the mere inadvertance of an independent department of government in making a return within due time, to paralyse the taxing power of the State, and we do not think this would be a proper construction under the circumstances of this case.

In Hopkins *vs.* Van Wyck, 80 Md. 15, where the Balt. City Code provided that the valuation of property as it stood on the assessor's books on the first Monday of March, should be the basis upon which taxes for the ensuing year should be levied, but certain property *property* of Mrs. Van Wyck was not placed on the books until May 12th, two days after levy for that year was made, and *in a suit like the present* by the collector to recover taxes upon this particular property, it was held that "it was never designed by this provision to exempt from taxation for a current year the individual who by adroitness *or otherwise*, succeeded in eluding the vigilance of

66 the assessors, or who by inadvertance was not rated with all his assessable property on the first Monday of March in that particular year." We can perceive no error in granting the plaintiff's second prayer, nor in rejecting the defendant's fourth and fifth prayers.

The evidence of John H. Carstairs, one of the defendants, is, that on June 14th, 1901, the tax bill here sued on, July 11th, 1901, was received by defendants, but that "they thought the matter was done with because the law in Baltimore had been declared unconstitutional." The receipt of this bill was notice to them of the assessment, and the act of 1898 ch. 275, gave a right of appeal therefrom. Had such appeal been taken, and had it resulted in declaring the assessment illegal, or erroneous, such judgment would have been pleadable in this suit and the facts set forth in defendant's 6th. prayer could not therefore be a bar to recovery. Fowble *vs.* Kemp, 92 Md. 360.

What we have said in reference to plaintiff's 2nd prayer, and to defendant's fourth and fifth prayers, is applicable to defendant's 7th prayer which was properly rejected.

Finding no error in any of the rulings, the judgment of the circuit court for Baltimore county will be affirmed.

Judgment affirmed with costs above and below.

Filed June 19th, 1902.

67 *Bond.*

Filed August 14th, 1902.

Know all men b- these presents, that we, Danial H. Carstairs, as principal, and the Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Willie B. Cochran, treasurer and collector of Baltimore county, in the full and just sum of three thousand, five hundred dollars, to be paid to the said Willie B. Cochran, treasurer and collector of Baltimore county, for the payment of w-ich well and truly to be made, the said Danial H. Carstairs and the said Fidelity and Deposit Company of Maryland hereby bind themselves and each of them, and the heirs executors and administrators of the said Danial H. Carstairs, and the
68 successors of the said Fidelity and Deposit Company of Maryland, jointly and severally, firmly by these presents, seal- with the seal of the said Danial H. Carstairs, and the corporate seal of said body corporate, attested by its secretary and signed by its president, duly authorized, this thirteenth day of August, A. D. 1902.

Whereas the said Willie B. Cochran, treasurer and collector of Baltimore county, in the State of Maryland, recovered a judgment in the circuit court for Baltimore county for the sum of $1517.69 on the 10th day of February, A. D., 1902, against the above bounden Danial H. Carstairs and against John H. Carstairs as copartners trading as Carstairs Brothers, and the said defendants afterwards ap-ealed from the said judgment and the rulings of the said court to the court of appeals of Maryland, and the said court at its April term,
69 A. D., 1902, affirmed the rulings of the said circuit court and its judgments aforesaid, and the said Danial H. Carstairs and John H. Carstairs, the said defendants in said action have obtained a writ of error to the Supreme Court of the United States from the rulings of the said court of appeals and filed in the office of the clerk of said court a copy thereof to reverse the said judgment and rulings, and a citation directed to the said Willie B. Cochran, treasurer and collector as aforesaid, citing and admonishing him to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date thereof.

Now, therefore, the condition of the above obligation is such that if the said Danial H. Carstairs and John H. Carstairs shall
70 prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then this obli-

gation shall be void, otherwise the same shall be and remain in full force and virtue.

DANIAL H. CARSTAIRS. [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
Per EDWIN WARFIELD, *President.*
THOMAS L. BERRY, *Ass't Secretary.*

[Seal Fidelity and Deposit Company of Maryland, Incorporated 1890.]

Sealed and delivered in the presence of
DANIAL V. LEE.

Approved
JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

71 On the back thereof, is the following endorsements to wit: Danial H. Carstairs and John H. Carstairs, trading as Carstairs Brothers. *vs.* Willie B. Cochran, treasurer. etc. Supersedeas bond.—Mr. Clerk:—Please file. W. Cabell Bruce and D. K. Este Fisher attorneys for plaintiffs in error.

72 STATE OF MARYLAND, *sct:*

I Thomas Parran, clerk of the court of appeals of Maryland, at Annapolis, do hereby certify that the foregoing is a true transcript of the record and proceedings in the case of Carstairs Bros., *vs.* Willie B. Cochran, treasurer, and collector of Baltimore county, as the same remains on file in the clerk's office of the said court of appeals.

And do further certify that the said court of appeals of Maryland is the highest court of law and equity in said State, in which a decision can, be had in said case.

Seal Court of Appeals, Maryland.

In testimony whereof, I have hereunto set my hand as clerk, and affixed the seal of the said court of appeals, this twenty-fifth day of August A. D. 1902.

THOMAS PARRAN,
Clerk Court of Appeals of Maryland.

Endorsed on cover: File No. 18654. Maryland court of appeals. Term No. 122. Daniel H. Carstairs and John H. Carstairs, co-partners, trading as Carstairs Brothers, plaintiffs in error, *vs.* Willie B. Cochran, treasurer and collector of Baltimore county. Filed August 28, 1902.